

WETLANDS COUNCIL

MINUTES

February 11, 2003

The Wetlands Council met on Tuesday, February 11, 2003 at the Department of Environmental Services, 6 Hazen Dr., Concord, NH

Attendees:

Council Members: Brian Fowler and Glen Normandeau
Designees: Sharon Champagne, Ted Diers, Brent Edmonds, William Ingham Jr., E. William Roy and Thomas Sloan

Absentees: Mike Dannehy, Camilla Lockwood and Bruce Schwaegler

Unfilled Positions: NH Certified Wetlands Scientists Representative and Municipal Official

The meeting was called to order by Chairman Brian Fowler at 9:15 a.m.

1. Approval of Minutes of January 14, 2003 Meeting

A motion was made by Mr. Normandeau to accept the minutes of January 14, 2003 as presented. Mr. Roy seconded the motion and the vote was unanimous.

2. Status of Appeals

- a. Docket No. 00-09 WtC - Conservation Law Foundation: Keene Bypass Appeal
Mr. Sclafani advised that there are no changes since the Council's January 14, 2003 meeting. The Supreme Court has accepted the appeal by the Department of Transportation but a hearing date has not been set by the Court.
- b. Docket No. 01-19 WtC - George Whalley: WB 2001-00196, Lake Winnepesaukee, Gilford
Mr. Sclafani advised that there are no changes since the Council's January 14, 2003 meeting. Settlement discussions are continuing.
- c. Docket No. 02-13 WtC - John P. and Carole Hoag et al.: WB 2002-00348, Appeal of (Boathouse) Permit of Timothy and Allison Vail – Moultonborough, Squam Lake
This is an appeal of a permit for a boathouse on Squam Lake which has been accepted by the Council. An appearance was filed on behalf of John P. and Carole Hoag by Attorney Randall F. Cooper. Attorney Cooper also filed (1) Motion to Dismiss (Issues not Properly Preserved), (2) Motion to Intervene, and (3) Motion to Dismiss (Standing to Appeal). A pre-hearing conference will be scheduled.

- d. Docket No. 02-15 WtC - Conservation Law Foundation: WB 2000-00131
NHDOT, Troy Bypass

This appeal was accepted by the Council on January 14, 2003. Attorney Bruce Marshall filed an appearance on behalf of the Department of Transportation. A pre-hearing conference will be scheduled.

- e. Docket No. 02-16 WtC - Donald S. Thompson: WB 2002-01019

The original appeal was filed timely but not in accordance with Council rules. A letter was sent to Mr. Thompson allowing him 30 days in which to file an amended appeal. A revised petition for appeal which was in conformance with Council rules was received by the Appeals Clerk within the prescribed 30-day window on January 31, 2003.

A motion was made by Mr. Ingham to accept the appeal of Donald S. Thompson. Mr. Normandeau seconded the motion and it was unanimously voted.

A pre-hearing conference will be scheduled.

- f. Docket No. 02-17 WtC - Timothy L. Whiting: WB 2002-01019

This appeal was filed timely but not in accordance with Council rules. A letter was sent to Mr. Whiting allowing him 30 days in which to file an amended appeal. A revised appeal to correct the deficiencies was not filed within the 30-day extension period. Therefore, this appeal is no longer timely nor in conformance with the rules.

A motion was made by Mr. Normandeau to summarily dismiss the appeal of Timothy L. Whiting. Mr. Edmonds seconded the motion and it was unanimously voted.

Chairman Fowler explained that upon receipt of a timely appeal which does not conform to the rules, the Council is required to advise the appellant that the appeal does not meet the rules and offer the appellant 15 days in which to cure any defects. An administrative decision was made to give the appellant, Mr. Whiting, 30 days to resubmit. Mr. Sclafani commented that the 30-day extension to correct deficiencies was an acceptable procedure and one recommended by Council's attorney as long as the initial petition was filed in a timely manner. Council's attorney did caution, however, that any extension granted to correct deficiencies should be strictly adhered to.

Another appeal regarding this same issue was untimely filed by Marie Pino. This appeal was summarily dismissed by the Council at the January 14, 2003 meeting. Both Mr. Whiting and Ms. Pino were advised that their interests run parallel with those of Donald Thompson, Docket No. 02-16 WtC, and that they could join in the Thompson appeal.

- g. Docket No. 03-01WtC - Windmill Shares Community Association:
A withdrawal of this appeal was received on January 13, 2003. Chairman Fowler commented that this case is an example of the Bureau working with appellants to resolve issues at the Bureau level. Further, he expects to see fewer issues brought before the Council in the future because of the commitment level of the current management of the Wetlands Bureau to address these matters.
- h. Docket No. 02-10/11 WtC – Leslie Ludtke / Gordon Blakeney: WB 2000-2714, City of Concord, Langley Parkway.
Two pre-hearing conferences have been held and the case is now ready for hearing. The only pending issues relate to standing.

A motion was made by Mr. Diers to grant standing to the parties as a group and allow a hearing to move forward as scheduled on March 11. Mr. Normandeau seconded the motion and it was unanimously voted.

A second pre-hearing order addressing procedural issues with time restrictions set forth for each party's presentation will be issued to the parties with copies forwarded to Council members in advance of the hearing.

- **Other Business**

In order to expedite the appeals process, it has been the practice for Michael Sclafani, Appeals Clerk, to sign the Chairman's name followed by Mr. Sclafani's initials on Council documents which have been approved by the Chairman. Although this is an accepted practice, Council's attorney, Anne Edwards, suggested that the Council officially appoint the Appeals Clerk as a signor. Upon the approval of documents by the Chairman, the Appeals Clerk would be authorized to sign his own name on behalf of the Council.

Mr. Sloan made a motion to authorize the Appeals Clerk, Michael Sclafani, to sign his name to documents on behalf of the Council upon the approval of each document by the Chairman. Mr. Ingham seconded the motion and it was unanimously voted.

3. Permit by Notification Rules

Collis Adams, the Wetlands Bureau Administrator, was unable to attend the meeting to make a presentation on the permit-by-notification rules.

4. Discuss Wetlands Fee Increases

In Collis Adams' absence, Harry Stewart, Director of the Water Division, distributed to the Council a copy of the first Wetlands Bureau Annual Report for review and comment by Council members. The report articulates for the regulated community, the Wetlands Council, and the legislature the status of wetlands projects such as education, outreach, permitting, fines and enforcement, restoration, regulatory policy improvements and Wetlands Council activities. The intent is to prepare an annual report in August/September each year.

Mr. Stewart reviewed with the Council HB 810 which will be heard on February 18 at 11:00 by the House Resources, Recreation & Development Committee. This bill establishes fee increases to support DES staff at current levels. In order to reduce the backlog to an acceptable level, a decision was made three years ago to increase staff beyond that which could be sustained by current revenues and draw down the fee account which had been bolstered by some unusual one-time receipts. This bill puts revenues in place to support and stabilize the program for the long term. The bill also contains turnaround time requirements for processing permits. Collis Adams and Rene Pelletier have been meeting with the regulated community, Association of General Contractors, Marine Trades Association, and GSDI to work out the details and come to a consensus. The increases are similar to those requested last year with shortened turnaround times. The \$.10 per square foot fee for basic dredge and fill permits is the same.

5. Other Business

Council Vacancies

Chairman Fowler has met with Governor Benson, who is mindful of the Council's vacancies. Chairman Fowler also has had discussions with the Municipal Association and the NH Association of Natural Resource Scientists to determine what progress has been made in filling the vacancies. There is nothing further to report at this time.

Introduction

Bob Monaco, Acting Commissioner of the Department of Environmental Services, introduced himself to the Council members. Mr. Monaco expressed his support for the Council and advised the Council that he has an open door policy at the Department.

A short recess was taken for the Council members to meet Mr. Monaco.

The meeting was reconvened at approximately 10:15

6. Next Meeting

The next meeting is scheduled for March 11, 2003. Docket No. 02-10/11 will be heard at that time.

7. Adjournment

A motion was made by Mr. Diers to adjourn. The motion was seconded by Mr. Roy and unanimously voted.

The meeting adjourned at approximately 10:45 a.m.

Chairman Fowler immediately reconvened the meeting to discuss recusals. Mr. Fowler discussed this matter with the Council's attorney, Anne Edwards. She pointed out that the Councilors are statutorily appointed to represent their agencies. If there is an appeal before the Council which involves a permit issued by a Councilor's department, there is no need for the Councilor to recuse himself/herself from the proceedings because the statute allows all designated agencies to be represented. Unless there is a demonstrable personal interest, a Councilor does not need to step down. By doing so, that Councilor's agency is deprived of its right to be represented and the Council would be unfairly deprived of that Councilor's expertise relative to the project.

The original vote to adjourn will stand.